B104 (FORM 104) (08/07)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)	**ADVERSARY PROCEEDING NUMBER** (Court Use Only)
PLAINTIFFS FARMER, JOSHUA FARMER, ANDREA	**DEFENDANTS** **STRUCTURED ASSET MORTGAGE INVESTMENTS II INC., BEAR STEARNS ALT-A TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2006-7; CITIBANK, NATIONAL ASSOCIATION AS TRUSTEE FOR STRUCTURED ASSET MORTGAGE INVESTMENTS II INC., BEAR STEARNS ALT-A TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2006-7; AND EMC MORTGAGE CORPORATION**
ATTORNEYS (Firm Name, Address, and Telephone No.) O. MAX GARDNER P.O. BOX 1000 SHELBY, NC 28151-1000	**ATTORNEYS** (If Known)
PARTY (Check One Box Only) X Debtor ☐ U.S. Trustee/Bankruptcy Admin ☐ Creditor ☐ Other ☐ Trustee	**PARTY** (Check One Box Only) ☐ Debtor ☐ U.S. Trustee/Bankruptcy Admin **X** Creditor ☐ Other ☐ Trustee

CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)
COMPLAINT FOR DECLARATORY JUDGMENT

NATURE OF SUIT
(Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)

FRBP 7001(1) – Recovery of Money/Property
☐ 11- Recovery of money/property - §542 turnover of property
☐ 12- Recovery of money/property - §547 preference
☐ 13- Recovery of money/property - §548 fraudulent transfer
☐ 14- Recovery of money/property – other

FRBP 7001(2) – Validity, Priority or Extent of Lien
☐ 21-Validity, priority or extent of lien or other interest in property

FRBP 7001(3) – Approval of Sale of Property
☐ 31-Approval of sale of property of estate and of a co-owner-§363(h)

FRBP 7001(4) – Objection/Revocation of Discharge
☐ 41-Objection / revocation of discharge - § 727(c), (d), (e)

FRBP 7001(5) – Revocation of Confirmation
☐ 51-Revocation of confirmation

FRBP 7001(6) – Dischargeability
☐ 66-Dischargeability - §523(a)(1), (14), (14A) priority tax claims
☐ 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud
☐ 67-Dischargeability-§523(a)(4),fraud as fiduciary, embezzlement, larceny

(continued next column)

FRBP 7001(6) – Dischargeability (continued)
☐ 61-Dischargeability - §523(a)(5), domestic support
☐ 68-Dischargeability - §523(a)(6), willful and malicious injury
☐ 63-Dischargeability - §523(a)(8), student loan
☐ 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)
☐ 63-Dischargeability - other

FRBP 7001(7) – Injunctive Relief
☐ 71-Injunctive relief – reinstatement of stay
☐ 72-Injunctive relief – other

FRBP 7001(8) – Subordination of Claim or Interest
☐ 81-Subordination of claim or interest

FRBP 7001(9) – Declaratory Judgment
X 91-Declaratory judgment

FRBP 7001(10) – Determination of Removed Action
☐ 01-Determination of removed claim or cause

Other
☐ SS-SIPA Case – 15 U.S.C. §§78aaa *et.seq.*
X 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case) STAY VIOLATION

☐ Check if this case involves a substantive issue of state law	☐ Check if this is asserted to be a class action under FRCP 23
☐ Check if a jury trial is demanded in complaint	Demand $TO BE DETERMINED BY THE COURT

Other Relief Sought

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BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR FARMER, JOSHUA FARMER, ANDREA	BANKRUPTCY CASE NO. 10-40270	
DISTRICT IN WHICH CASE IS PENDING WESTERN DISTRICT OF NORTH CAROLINA	DIVISIONAL OFFICE CHARLOTTE	NAME OF JUDGE GEORGE R. HODGES

RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY PENDING	DIVISIONAL OFFICE	NAME OF JUDGE

SIGNATURE OF ATTORNEY (OR PLAINTIFF)	
DATE DECEMBER 14, 2010	PRINT NAME OF ATTORNEY (OR PLAINTIFF) O. MAX GARDNER III

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing a adversary proceeding must also complete and file Form 104, the Adversary Proceeding Cover Sheet, if it is required by the court. In some courts, the cover sheet is not required when the adversary proceeding is filed electronically through the court's Case Management/Electronic Case Files (CM/ECF) system. (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs this information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and **Defendants.** Give the names of the plaintiffs and the defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and in the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

**IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

IN THE MATTER OF:

	)	
RAYMOND B. FARMER AND	)	**CHAPTER 11 CASE NO. 10-40269**
DIANE P. FARMER,	)	
	)	
Debtors.	)	
	)	
JOSHUA FARMER AND	)	**CHAPTER 11 CASE NO. 10-40270**
ANDREA FARMER,	)	
	)	
Debtors.	)	
______________________________	)	

**JOSHUA B. FARMER, AND WIFE
ANDREA G. FARMER,** **ADV. PROC. NO.**

Plaintiffs,

vs.

**STRUCTURED ASSET MORTGAGE INVESTMENTS II INC.,
BEAR STEARNS ALT-A TRUST, MORTGAGE PASS-THROUGH
CERTIFICATES SERIES 2006-7;
CITIBANK, NATIONAL ASSOCIATION AS TRUSTEE
FOR STRUCTURED ASSET MORTGAGE INVESTMENTS II INC.,
BEAR STEARNS ALT-A TRUST, MORTGAGE PASS-THROUGH
CERTIFICATES SERIES 2006-7; AND
EMC MORTGAGE CORPORATION;**

Defendants.

COMPLAINT

1. This is an action brought by the Debtors for a Declaratory Judgment, injunctive and equitable relief as provided for by Rules 3001, 3007, 7001(7) and 7001(9) of the Federal Rules of Bankruptcy Procedure ("Rules of Bankruptcy Procedure"). This is also an action against Defendants for violation of the automatic stay provided by Section 362(a) of Title 11 of the United States Code.

2. This is also an action to determine the secured status of the Defendants in this case pursuant to Sections 105(a), 502(b)(1), 506 and 544(a) of the Bankruptcy Code and Rule 3007 of the Bankruptcy Rules.

Jurisdictional Statements and Parties

3. The above captioned debtors, Raymond B. Farmer and wife Diane P. Farmer and Joshua Farmer and wife, Andrea Farmer are the debtors in possession in the above-captioned Chapter 11 bankruptcy cases commenced on April 5, 2010.

4. The cases were subsequently consolidated by the Bankruptcy Court. Joshua B. Farmer and Andrea G. Farmer are the plaintiffs in this adversary proceeding.

5. Venue of the bankruptcy cases is appropriate in this court pursuant to 28 USC §1408. Venue of the instant complaint is appropriate pursuant to 28 USC §1409.

6. This court has jurisdiction of the bankruptcy case and this complaint pursuant to 28 USC §1334.

7. This is a core proceeding within the meaning of that statute, and the court has jurisdiction to enter a final judgment.

8. Upon information and belief, defendant STRUCTURED ASSET MORTGAGE INVESTMENTS II INC., BEAR STEARNS ALT-A TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2006-7 (the "Trust") is a New York common law trust created pursuant to the terms of a Trust agreement as identified herein.

9. Upon information and belief, defendant Citibank, National Association ("Citibank"), is a federally chartered National Bank with a primary business location in New York, New York. Upon information and belief, Citibank is the Trustee for the Trust identified above.

10. Upon information and belief, defendant EMC Mortgage Corporation ("EMC") is a Delaware corporation doing business in the state of North Carolina with a primary business location in Lewisville, Texas. Upon information and belief, EMC is the mortgage servicer for the mortgage loan on the Plaintiff's residential real estate as described below.

Factual Allegations

11. As described on the Schedules A filed in the above-captioned bankruptcy cases, the bankruptcy estate of the debtors Joshua B. Farmer and Andrea G. Farmer contains interests in certain pieces of real property, to wit: four tracts of land including a single-family home located at 234 Edwards Street, Rutherfordton, Rutherford County, North Carolina, as more particularly described in that Deed recorded in Book 912 at Page 216 of the Rutherford County, North Carolina real property records (the "Property").

12. Prior to the commencement of these cases, the debtors Joshua B. Farmer and wife Andrea G. Farmer owned a 100% interest in the Property as tenants by the entireties.

The Promissory Note:

13. On August 23, 2006, Joshua Farmer and Andrea Farmer executed a certain Promissory Note payable to Homebanc Mortgage Corporation (“Homebanc”) in the original principal sum of $554,800.00 together with interest at the rate of 6.75% per annum (the “Note”). Upon information and belief, the Note has not been endorsed by Homebanc.

The Deed of Trust:

14. On or about August 23, 2006, Joshua Farmer and Andrea Farmer executed in favor of Homebanc a certain Deed of Trust (the “Deed of Trust”), granting Homebanc a security interest 100% undivided interest owned by the Farmers. The Deed of Trust, which secured the indebtedness evidenced by the Note, was recorded in the Rutherford County, North Carolina real property records on August 25, 2006 in Book 915 at Page 13.

15. The Property, or some partial interest thereof, is also allegedly encumbered by a subsequent deed of trust executed in favor of Homebanc recorded in the Rutherford County real property records at Book 915, Page 34.

The Assignment of the Deed of Trust:

16. A document that purports to be a “Corporate Assignment of Deed of Trust” was recorded on December 18, 2007 in Book 949 at Page 827 of the Rutherford County, North Carolina real property records (the “Assignment of Deed of Trust”). The alleged Assignment of Deed of Trust purports to assign the Mortgage and the Note from Homebanc to Mortgage Electronic Registration Systems, Inc. (“MERS”). The Assignment of Deed of Trust has an execution date of December 3, 2007.

17. MERS simply holds mortgage liens in a nominee capacity and through its electronic registry, tracks changes in the ownership of mortgage loans and servicing rights related thereto.

18. MERS does not make or originate mortgage loans to consumers or extend any credit to consumers.

19. MERS does not service mortgage loans, sell mortgage loans, does not ever receive or process mortgage applications, and is not a vehicle for creating or transferring beneficial interests in mortgage loans.

20. MERS is never the owner of any promissory note, has no legal or beneficial interest in the promissory note or other loan instruments or the mortgage indebtedness underlying the security instrument for which it serves as “nominee”.

21. MERS has no financial or other interest in whether or not a mortgage loan is repaid and has no rights to the payments made by the debtor on such promissory note.

22. At best, MERS is only a nominal party to the transaction which is the subject of this complaint, and has no legal standing whatsoever to the subject mortgage loan.

23. The purported Assignment of Deed of Trust is therefore obviously an attempt to doctor up an ownership trail that didn't exist in the first place.

The Securitized Trust:

24. In sworn filings with the Court in the above-captioned case 10-40270, defendant Citibank by and through defendant EMC Mortgage Corporation has asserted that it is the holder and owner of the Note and the real party in interest in connection with the legal and financial obligations arising under the Note. There is no record or evidence, however, of any assignment of the Deed of Trust or negotiations of the Note from Homebanc or from MERS to the defendant Trust. There is no record or evidence of any assignment of the Deed of Trust or negotiations of the Note from Homebanc or from MERS to the Depositor, which, upon information and belief is Structured Asset Mortgage Investments II Inc. ("SAMI II"). Furthermore, there is no evidence or record of any assignment of the Deed of Trust or negotiation of the Note from the Depositor SAMI II directly to the defendant Trust. Such a complete chain of transfers and assignments is a required, mandatory condition as provided for by Section 2.01 of the Pooling and Servicing Agreement as alleged hereinafter.

25. According to the public records, on or about October 1, 2006 a Pooling and Servicing Agreement (the "PSA") was entered into by and among the following parties: SAMI II (as Depositor), Wells Fargo Bank, National Association (as Securities Administrator and Master Servicer), EMC (as "Sponsor and Company"), and Citibank (as Trustee) for the purpose of creating a New York common law trust, designated as STRUCTURED ASSET MORTGAGE INVESTMENTS II INC., BEAR STEARNS ALT-A TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2006-7. The Pooling and Servicing Agreement can be located online with the United States Securities and Exchange Commission at:

http://www.sec.gov/Archives/edgar/data/1378876/000106823806001123/exhibit_10-1.htm

26. Section 2.01 of the PSA regarding Conveyance states in part that the Depositor (SAMI II), as of the Closing Date (October 31, 2006), "sells, transfers, and assigns to the Trust without recourse all its right, title and interest …" in certain defined mortgage loans. In essence, SAMI II agreed to sell certain mortgage loans to the defendant Trust, the beneficiaries of which purchased interests in the Trust. The Prospectus and the Prospectus Supplement can be located on-line with the United States Securities and Exchange Commission as follows:

http://www.sec.gov/Archives/edgar/data/1378876/000106823806001071/bsalta2006-7_424b5.htm.

27. According to the terms and conditions of the documents on file with the United States Securities and Exchange Commission, and filed under penalty of perjury, the Note was originated by Homebanc and the Deed of Trust as security for the Note was in favor of Homebanc. Furthermore, Homebanc then sold, assigned, transferred and negotiated the Note and Deed of Trust to SAMI II, as Depositor; and SAMI II as Depositor then sold, assigned, transferred and negotiated the Note and Deed of Trust to Citibank as Trustee for the New York common law trust known STRUCTURED ASSET MORTGAGE INVESTMENTS II INC., BEAR STEARNS ALT-A TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2006-7. Upon information and belief the said Trust, in turn, then caused said documents showing an unbroken chain of transfers and assignments as noted herein from the Seller/Originator to the Depositor and from the Depositor to the Trustee for the Trust to be delivered to a Master Document Custodian for the Trust.

28. The PSA establishes the management structure and mandatory formation and asset transfer and delivery rules for the Residential Mortgage Backed Securitized Trust (RMBS) in this case. This complex document provides extensive details governing the duties of the servicers in handling the loans and the allocation of cash flows from the borrowers to the investors in the bond or bonds issued by the Trust. The PSA also has strict Rules as to when all of the pool loans and other documents must be physically delivered to the Trust. These Rules are designed to protect the Tax status of the Trust and the resulting tax treatment of the Trust, and to balance the sometimes conflicting interest of the various classes of the investors or bondholders, as well as those of the issuers of the bonds, the servicers and others. The parties to the PSA agreement usually include the Sponsor, the Depositor, the Trustee for the Trust, the Master Servicer, a Special Servicer, and the Master Document Custodian for the trust for the purpose of confirming timely delivery of all loan documents to the Trust and to safeguard and hold the same.

29. The mortgage loans allegedly transferred to the Trust pursuant to the PSA were identified on an Exhibit B, attached to the PSA. The Plaintiffs allege that the Note in this case is one of the mortgage loans identified in said Exhibit B.

30. In this case, there is no evidence or record of the Deed of Trust or of the Note being duly transferred, assigned and negotiated from the named Seller (originator) or an agent or authorized assignee thereof directly to SAMI II as the Depositor pursuant to the terms of the PSA or the Prospectus and the Prospectus Supplement. The only public record with regard to the note is the recorded Deed of Trust and the later Assignment of Deed of Trust from Homebanc to MERS. The Assignment of Deed of Trust was executed and recorded in December 2007, more than a year after the Closing Date listed in the PSA – the date by which the Deed of Trust and Note were to have been properly transferred, assigned and/or negotiated to the Trust.

31. The Real Estate Mortgage Investment Conduit Rules (REMIC) are found in Sections 860A to 860G of the Internal Revenue Code. These provisions provide that an entity

satisfying the very specific requirements of the law will qualify as a REMIC and will be treated as a pass-through entity for tax purposes (i.e., the income passes through the REMIC to the certificate holders without paying tax at the REMIC trust level). In order to maintain its tax free status, substantially all of the REMIC's assets through the REMIC's lifetime must be "qualified mortgages" or "permitted investments." This test is commonly referred to as the "asset test" for REMIC qualification. Generally speaking, a "qualified mortgage" is an obligation that is principally secured by an interest in real property and that is fully transferred and assigned to and in the possession of the REMIC by the end of the third month following the REMIC's startup date. The REMIC trust would lose its pass-through tax exempt status by the purchase of mortgage loans after this final delivery date and thus the PSA's are all structured to strictly provide that this REMIC date is always the final date for the Trust to accept and receive the mortgage loans. REMIC status is crucial to the securitization market, because it assures the bondholders that the trust will be a pass-through entity for tax purposes, avoiding a devastating double tax if the loan pool or trust were to be taxed as well. REMIC status is gained and maintained by strict compliance with the rigid rules that prohibit the acceptance of mortgage loans after the cut-off date established by the PSA, the sales and exchanges of mortgage loans in the trust, and the modification of mortgage loans except to the limited extent permitted by the PSA.

32. The REMIC rules, PSA's and loan documents, the rating agency guidelines and the accounting standards such as FASB 140, together provide a strict regimen for the securitization of real estate mortgage loans. The REMIC rules require that REMIC pools be static--subject to very limited exceptions, they cannot be expanded, or significantly altered once formed. Failure to strictly observe these rules is the tax equivalent of Armageddon for REMIC investors, servicers and other participants, because the loss of REMIC status is a cataclysmic event in terms of double taxation, and even penalty taxes on pool income. The REMIC rules therefore severely limit the substation of collateral, sale, or modification of loans in the pool prior to foreclosure.

33. The Trust in this case elected to be classified as a “REMIC” Trust under the applicable provisions of the Internal Revenue Code of 1954, as amended.

The Proof of Claim Related to the Note:

34. On July 5, 2010, defendant “Citibank, N.A. as Trustee for the Certificateholders of Structured Asset Mortgage Investments II Inc., Bearn Stearns ALT-A Trust, Mortgage Pass-Through Certificates Series 2006-7 by and through EMC Mortgage Corporation” filed a sworn proof of claim in case number 10-40270 (Joshua Farmer and Andrea Farmer) in the amount of $588,707.12 (the “Proof of Claim”).

35. Defendant Citibank asserts in the Proof of Claim that it has a secured claim against the bankruptcy estate of debtors Joshua Farmer and Andrea Farmer as it alleges to be the

holder and owner of the Note and beneficiary of the Deed of Trust by attaching said documents to the Proof of Claim.

36. The Proof of Claim included as attachments the Deed of Trust and the Note as modified by a Fixed/Adjustable Rate Rider agreement. No report was included itemizing any charges which comprise the alleged sum due. The Proof of Claim did not include any endorsement or endorsements evidencing the transfer and delivery of the Note to the Trust, the identified claimant therein. Accordingly, the Proof of Claim included no documents supporting the position that the Trust is the present transferee, holder and owner of the Note. In addition, the Proof of Claim failed to attach a copy of the Pooling and Servicing Agreement referred to herein which allegedly granted Citibank legal authority to act for the Trust. Further, no document was attached evidencing any authority of EMC Mortgage Corporation to act for the Trust. These omissions are in violation of the mandatory Federal Rule of Bankruptcy Procedure 3001 and the written instructions on the Official Proof of Claim form.

37. The Plaintiffs allege that Rule 3001(c) of the Bankruptcy Rules and Paragraph 9 of the Official Proof of Claim form expressly require a party filing a Proof of Claim to attach “all supporting documents.” To the extent that documents are not filed in support of this Proof of Claim as required by Rule 3001(c), the filing of the Proof of Claim itself constitutes an improper and illegal attempt to secure property of the estate in bankruptcy in violation of the automatic stay.

The Motion for Relief from Stay:

38. On or about October 18, 2010, a “MOTION FOR RELIEF FROM STAY OR IN THE ALTERNATIVE FOR ADEQUATE PROTECTION” (the “Motion for Relief”) was filed in the underlying case by “Citibank, N.A. as Trustee for the Certificateholders of Structured Asset Mortgage Investments II In., Bearn Stearns ALT-A Trust, Mortgage Pass-Through Certificates Series 2006-7 by and through EMC Mortgage Corporation."

39. The Motion for Relief included as exhibits a copy of the Deed of Trust and a copy of the Note together with the Fixed/Adjustable Rate Rider agreement.

40. The allegations that Citibank, in its capacity as trustee of the Trust, is the holder of the Note are allegedly false and fraudulent due to the fact that the subject Note and Deed of Trust have not been properly negotiated in an unbroken chain of endorsements from the originator to the depositor and from the depositor to the trusts, pursuant to the mandatory conveyancing rules of the PSA and the applicable REMIC tax laws.

41. The allegation that Citibank, in its capacity as trustee for the Trust, is the holder of the Note constitutes an illegal and improper attempt to secure property of the estate in bankruptcy in violation of the automatic stay.

First Claim for Relief
The Defendants are Estopped and Precluded from Asserting Any Claim Secured or Unsecured and in the Alternative are Unsecured Creditors

42. The allegations in paragraphs 1 through 41 of this complaint are realleged and incorporated herein by this reference.

43. Defendant Citibank asserts that it is the "holder" of the Note in its capacity as trustee of the Trust. However, in documents filed under penalty of perjury with the Securities and Exchange Commission, Homebanc should have sold the mortgage loans to the Depositor, who in turn should have sold the mortgage loans to the Trust. As a result, Defendant Citibank is estopped and precluded from asserting any claim in this case, either secured or unsecured.

44. The Plaintiffs further allege that no documents or records have been filed or recorded that demonstrate that prior to the petition date the Note was duly endorsed, transferred and delivered to the Trust.

45. On the contrary, all of the documents filed in this case demonstrate that the loan instrument has not been lawfully and properly and duly endorsed, transferred and delivered to the Trust.

46. The Plaintiffs allege that in order for the Trust to have valid and enforceable secured claims against the real property of this estate in bankruptcy the Trust must prove that it received an endorsement of the Note that was duly executed prior to the petition date and that it had physical possession of the Note at that point in time. Absent such proof, the Plaintiffs allege that the Trust has failed to demonstrate that it had standing as a secured creditor in this case prior to the creation of the Bankruptcy Estate. Furthermore, since the Trust does not hold and possess the Note, it is estopped and precluded from asserting any secured or unsecured claims in this case.

47. The Plaintiffs aver that any documents that purport to transfer any interest in the Note to the Trust post-petition are void as a matter of law pursuant to Sections 362(a)(4) and 549 of Title 11 of the United States Code.

48. The Plaintiffs allege that one purpose of the PSA is to document that in the regular course of business the Defendants acquired mortgage loans and desire by the PSA to confirm the terms and conditions under which the Trust will "acquire the mortgage loans."

49. The Plaintiffs allege that the mortgage loans allegedly transferred to the Trust pursuant to the PSA were identified on an Exhibit, attached to the PSA as "Mortgage Loan Schedule."

50. The Plaintiffs allege that the Note in this case was one of the mortgage loans identified in the said Exhibit.

51. The Plaintiffs allege that the Note in this case was never lawfully negotiated and physically delivered to the Trust in an unbroken chain of endorsements.

52. The Plaintiffs allege that as a result of the terms of the PSA and other documents signed in relation thereto and identified herein Citibank, as trustee of the Trust, is collaterally and judicially estopped from claiming any interest in the Note that is allegedly secured by the Deed of Trust. The Plaintiffs also allege that Citibank is estopped and precluded from asserting any secured or unsecured claim in this case.

53. The Plaintiffs therefore allege upon information and belief that none of the Defendants in this case holds a perfected and secured claim in the Property of this estate in bankruptcy and that all of the said Defendants are estopped and precluded from asserting an unsecured claim against this estate.

Second Claim for Relief
The Defendants' Proof of Claim

54. The allegations in paragraphs 1 through 53 of this complaint are realleged and incorporated herein by this reference.

55. The actions of Citibank, by and through EMC Mortgage Corporation, in filing an improper, invalid and defective secured Proof of Claim in this case constitute a gross violation of the Bankruptcy Code and the Bankruptcy Rules. Such Claim has been filed under penalty of criminal and civil sanctions and therefore constitutes affirmative representations that both entities are in fact secured creditors in this case.

56. The actions of Citibank, by and through EMC Mortgage Corporation, in filing an improper Proof of Claim without any documentation of their secured status should result in the imposition of sanctions by this Court under Section 105(a) of Title 11 of the United States Code.

57. As a result of the above gross violations of the Code, the Rules and their sworn attestations and representations, the Plaintiffs allege that both Citibank and EMC Mortgage Corporation are liable to the Plaintiffs for actual damages, punitive damages and legal fees.

Third Claim for Relief
The Defendants' Proof of Claim is Defective

58. The allegations in paragraphs 1 through 57 of this complaint are realleged and incorporated herein by this reference.

59. Rule 3001(c) of the Bankruptcy Rules provides that when "a claim is based on a writing" the "original or a **duplicate shall be filed with the proof of claim**." The claim filed by Citibank, by and through EMC Mortgage Corporation, in this case is fatally defective for failure to comply with this mandatory Rule.

60. As a result of the Defendant's violation of federal rules of procedure as alleged herein, the Defendants are liable to the Plaintiffs for monetary damages and legal fees.

Fourth Claim for Relief
The Defendants' Proof of Claim and Motion for Relief from Stay
Violate the Automatic Stay

61. The allegations in paragraphs 1 through 60 of this complaint are realleged and incorporated herein by this reference.

62. The actions of Citibank and EMC Mortgage Corporation in filing an improper Proof of Claim and the Motion for Relief in this case constitute an attempt to unlawfully secure property of the estate in violation of Section 362(a)(3) of the Bankruptcy Code.

63. As a result of the above violations of 11 U.S.C. Section 362, Citibank and EMC Mortgage Corporation are liable to the Plaintiffs for actual damages, punitive damages and legal fees.

WHEREFORE, Plaintiffs request that the court enter judgment finding and declaring that:

a. Neither the Trust nor EMC Mortgage Corporation has any enforceable secured or unsecured claim against property of the estate in bankruptcy;

b. the Trustee for the Trust has no enforceable secured or unsecured claim against property of the estate in bankruptcy;

c. Homebanc has no enforceable secured or unsecured claim against property of the estate in bankruptcy;

d. The sworn Proof of Claim filed by Citibank, by and through EMC Mortgage Corporation, is fatally defective;

e. The sworn Proof of Claim and the Motion for Relief filed by Citibank, by and through EMC Mortgage Corporation, are attempts to unlawfully claim a secured position on property of the estate and thus constitutes an affirmative and intentional misrepresentation to this Court;

f. In the alternative, any efforts of the Defendants to assign and deliver the Note to the Trustee or the Trust post-petition should be declared an unlawful act in willful violation of Section 362(a)(4) and (a)(b) of the Bankruptcy Court;

g. The Deed of Trust be assigned to the Debtors in possession along with the underlying Note;

h. The Plaintiffs have and recover actual and punitive damages in an amount to be determined by this Court;

i. The Plaintiffs have and recover their reasonable legal fees in an amount to be determined by this Court;

j. The Plaintiffs recover all reasonable costs and expenses in this case in an amount to be determined by this Court;

k. The Plaintiffs have such other and further relief as to the Court may seem just and proper.

Dated this 14th day of December, 2010.

____

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